

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.2926 OF 2017

Dinesh Shivaji Bhintade
vs.
The State of Maharashtra

..Applicant

...Respondent

Ms.Padma S. Shelatkar i/b Mr. Pradeep Kumar Jain for the Applicant .
Mr. Y. M. Nakhwa, APP for the Respondent.

CORAM : P. N. DESHMUKH, J.
DATE : 27th MARCH, 2018

P.C.:

. Applicant involved in C.R. No.36/2017 registered at Kondhwa Poice Station, Pune for offence punishable under section 376, 506 of IPC and under section 4, 6 and 12 of POCSO Act has filed this application for bail.

2. Heard learned counsel for applicant and learned APP. Perused charge-sheet. It is submitted on behalf of applicant that statement of victim cannot be relied upon as she has not identified applicant as a person who is involved in the present offence. By referring to her statement recorded on 18/11/2017 an attempt is made to establish that when photographs were confronted to the victim girl she had identified some other person as accused. It is therefore submitted that according to victim applicant is not the person who is indulged into the case as lodged by complainant as well as victim girl. By referring to statement of one Malati who at the material time was working as attendant on school bus, it is submitted that from her statement except for applicant coming out of school bus on 28/1/2017 at 12.00 noon nothing is established and has therefore submitted that since identity itself is doubtful and has not been established by the victim girl

and as charge-sheet is already filed application be allowed.

3. Learned APP has submitted that involvement of applicant is prima facie established from the statement of victim as well as from the statement of mother/complainant which is further corroborated by medical evidence and has therefore submitted that considering age of victim girl, there is every possibility of her committing trifling mistakes however that by itself cannot be a ground to allow the application and thus contended that application be rejected.

4. Before considering the application on merits it is to be noted that age of prosecutrix is 4 years and she is a KG student and used to travel to school by school bus of which applicant is a driver. Keeping these aspects in mind perusal of report lodged by victim's mother reveals that on 21/1/2017 as she noted her daughter to be not behaving normal she inquired with her daughter to which she disclosed that applicant is in habit of inappropriately touching her in the school bus. Victim girl has referred applicant as "takle uncle" who is indulged in the act of touching her private part. On specific inquiry her minor daughter disclosed name of applicant as "Dinesh uncle", who used to indulge in the act of touching her private part by making her sleep on the last seat in the bus.

5. Further contents of report establish involvement of applicant as according to its contents when complainant approached the principal of the school and when informed about the incident, Principal has confronted victim with photographs of school bus drivers out of which victim identified applicant to be the person and referred him as "takle uncle".

6. In the background of facts in the report as aforesaid when statement of victim is perused it further substantiates involvement of

applicant wherein she in clear terms has stated that on her bus sometime applicant is a driver and sometime driver Ganesh is on duty and has stated that both of them are inappropriately touching her and other minor girls. Ganesh is co-accused in this crime and is in custody. It is noted that at the time of recording her statement she has initially identified applicant as Ganesh however immediately she corrected herself and identified applicant as Dinesh who is in habit of touching her inappropriately. From her statement it further appears that photographs of both the Bus drivers were shown to her at one and the same time. As such as age of victim is of 4 years this by itself cannot be a ground to hold that she has wrongly identified applicant as Dinesh.

7. Though learned counsel for applicant has submitted that from the statement of Malati nothing can be established, on perusal of said statement it is noted that one day after the school was over, she found applicant coming out of the bus from the last seat and on inquiry as to what was he doing inside the bus he did not reply anything. According to complainant school time is 7.30 a.m. to 12.00 noon . At 12.00 noon there appears no reason for the bus driver to be on the back seat of the bus. Victim girl in her statement recorded under section 162 of Cr.P.C. in clear terms has stated that applicant apart from touching her inappropriately in washrooms also use to touch her as stated above on the back seat of the school bus. She has also involved co-accused in the similar act. In her statement there is specific role attributed to applicant of putting fingers into her private part. In the background of said statement dated 4/2/2017, when medical report is perused it corroborates with the statement of victim as in the history given by victim to medical officer, it is stated that applicant along with co-accused was in a habit of sexually assaulting her as well as other girls by touching inappropriately and by putting finger into her private part after removing her inner-wear.

8. According to Medical officer on physically examining the girl it is opined that there is possibility of attempt of genital penetration though no external injuries were found on the person of the victim girl.

9. Considering the facts as aforesaid, there is sufficient evidence against applicant. Application is liable to be dismissed. Application is rejected.

(P.N. DESHMUKH, J)